

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5338 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

J A PANDYA

Versus

STATE OF GUJARAT

Appearance:

MR BIPIN P JASANI for Petitioner
MR UA TRIVEDI FOR MR RJ OZA for Respondent No. 1
MR PARESH UPADHYAY for Respondent No. 2, 3 & 4

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 05/05/2000

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India, the petitioner seeks to challenge the legality and validity of the impugned inaction of the respondent for non-preparation of revised pension papers with effect

from 16.6.76 and not after the actual date of retirement, like that, 31st March 1984 and other retiral benefits.

The petitioner was, initially, appointed on 8.7.48 as Clerk under the office of the Deputy Engineer, Meshwo Canal, and he worked there upto 31st December, 1952. Subsequently, he worked as Junior Clerk in the office of the Executive Engineer, Ahmedabad Irrigation Division, Ahmedabad. Thereafter, he worked as Senior Clerk from 17.5.73 to 30.5.76, after getting promotion and worked under the office of the Executive Engineer, Ahmedabad. He also worked as Senior Clerk in the Office of the Executive Engineer, Gujarat Tubewell, Division 1, Ahmedabad from 1.6.76 to 7.5.78. He also worked as Senior Accounts Clerk from 8.5.78 to 30.6.81 and also from 1.7.81 by getting promotion as Head Clerk upto 31st March, 1984 in the pay scale of Rs.425-800. The birth date recorded in service book of the petitioner is 7.3.1926. He retired on superannuation and was relieved from service as Head Clerk on 31.3.1984.

It is also the case of the petitioner, that his pension case was finalised by the Accountant General's Office, Ahmedabad on 5.4.84 with effect from 1.4.1984 and payment of pension order was also issued in his favour and, accordingly, he was regularly paid pension from 1.4.84 and he continued to get pension from that date.

As per the case of the petitioner, thereafter, respondent No.4, by writing a letter dated 19.6.89 informed the petitioner that revised pension papers were prepared and therefore the petitioner was invited to sign the papers so that further action could be taken. A copy of the said letter is also produced at Annexure B to the petition.

Affidavit in reply is filed by respondent No.2, V.R.Dave, wherein, it is, inter alia, contended that since the petitioner was in Government service prior to his enbloc transfer to the Gujarat Water Resources Development Corporation, respondent No.2, with effect from 1.6.76 and since the petitioner had already been absorbed as a Corporation servant, the petitioner is entitled to pension from the Government for his services rendered upto 31.5.76 only. It is also stated that the petitioner was, thereafter, worked in the Corporation and his legitimate dues for the services rendered by the petitioner in the Corporation are payable by the Corporation. Thus, the amount of pension as sanctioned by the Government earlier is required to be revised in view of the fact that by sanctioning the pension earlier,

the entire services of the petitioner upto the date of retirement was, through an oversight, treated to be pensionable service. It is also, clearly, averred in the affidavit in reply that after the retirement of the petitioner with effect from 31st March, 1984, necessary pension papers were prepared by the Corporation, which were sent to the office of the Accountant General and the pension case of the petitioner was finalised by the Government and necessary amount of pension was sanctioned considering the entire services of the petitioner upto the date of retirement as a Government servant. However, after the transfer of the petitioner with effect from June 1976, the petitioner was afforded an opportunity of exercising his option as to whether he would like to be absorbed in the Corporation or continue with the Government. The petitioner opted for permanent absorption in the Corporation. The said option of the petitioner was finally approved by the Government by its resolution dated 29th April, 1978.

It is, therefore, the case of the respondent that since the option of the petitioner had already been decided by the Government, regarding permanent absorption in the respondent Corporation, he was treated to be the servant of the Corporation with effect from June 1976. However, pension papers as prepared by the Corporation considering his entire service as a Government servant were, as such, by mistake sanctioned by the Government and the pension of the petitioner was also fixed by the Government treating his entire service upto the date of retirement as the Government servant. When such a mistake was brought to the notice of the Government, on the request of the Government, the Corporation has issued letter dated 19.6.89 to the petitioner asking him attend the office for revision of his pension papers, so as to rectify the mistake crept in preparing the pension papers. In short, the main contention on behalf of the respondents is that the service rendered by the petitioner in the Corporation with effect from June 1976 cannot be treated to be pensionable service in view of the fact that the petitioner had already exercised option for permanent absorption in the service of the respondent No.2 Corporation and upon his becoming an employee of the Corporation.

However, it is also stated that the Government, thereafter, thought that since certain categories of persons were not given the opportunity for absorption either in the Corporation or with the Government, the Government by its resolution dated 14th October, 1981 took decision that said employees should also be afforded

with an opportunity for exercising option afresh after superseding all previous orders of absorption of officers and employees under the Corporation, the Government directed by its resolution dated 14th October, 1981, that the Government officers and employees should be given an opportunity for absorption afresh. It is also pointed in the said resolution in clause (ii) in para 1, the Government directed that the Government employees who had earlier opted for permanent absorption under the Corporation have also to exercise option afresh. The legality and validity of the said resolution was questioned before this Court by filing Special Civil Application No.4824/81, wherein, this Court held that the said resolution dated 14.10.81 is not legally valid to the extent to which it related to those who had already exercised the option and had been duly absorbed with the Corporation. It is, in this context, it has been stated that the contention of the petitioner that he opted to continue in Government service is completely incorrect and it was denied. In this context, it is the case of the respondent authorities that the service rendered with the Corporation cannot be said to be the period which can be reckoned as pensionable service. In view thereof, the pension of the petitioner which was fixed by the Government earlier on the basis of his entire service upto the date of retirement as a Government servant was required to be revised and, therefore, revised pension papers were prepared. It is the further case of the respondent that by letter dated 18.3.1985, of the Government of Gujarat, addressed to the respondent Corporation, the respondent No.2 Corporation was informed that the employees in respect of whom the option for permanent absorption in the Corporation was finally decided by the Government are not entitled for option afresh as contemplated in para 1(ii) of the resolution dated 14th October, 1981 and the said employees are not required to exercise their option afresh.

The resolution dated 14.10.81 of the Government was, therefore, challenged in a writ petition being Special Civil Application No.4284/81, wherein, this Court had held that the resolution to the extent to which it related those who have already exercised the option had been duly absorbed with the Corporation on acceptance of their such option. Therefore, it is the case of the respondent Corporation that the orders contained in para 1(ii) of the Government Resolution dated 14.10.81 need not, now, be invoked in cases of the employees who have already opted for permanent absorption in the respondent Corporation and the Government officers and employees who had been permanently absorbed under the Corporation after

having been afforded with the opportunity of exercising option.

In the above context, it is the case of the respondent Corporation that there would not arise any question of exercising option afresh as the petitioner had earlier exercised his option. Therefore, the fixity of pension by the Government for the entire length of service was required to be revised and, accordingly, revision of pension was necessitated. It is in this context, the petition is opposed.

After having considered the facts and circumstances emerging from the record of the present case and the rival submissions, the matter is required to be remanded to the respondent authority so as to consider the available benefits to the petitioner since he had already opted for permanent absorption with the respondent Corporation. The amount of pension fixed earlier was under a mistake treating the period of employment with the Corporation as the period of Government service. It is in this context, the respondent authority is required to be directed to reexamine the whole case and reconsider the merits of the petitioner's entitlement and pass appropriate order in terms of prevalent resolutions and provisions.

In the circumstances, following directions are issued:

The respondent authority shall reconsider the case of the petitioner for pension and other pensionary benefits including the question of exercise of option and will revise the pension and other retiral benefits after scrutinising the relevant documents and papers, after giving an opportunity of hearing to the petitioner, as early as possible, but not later than 15th August, 2000.

In view of the aforesaid directions for fresh decision for pension and other pensionary benefits, this petition stands disposed of. In the event of any difficulty, liberty is reserved. In the meantime, interim relief granted by this Court earlier shall stand extended and in the event of any adverse order, against the petitioner it will be open for the petitioner to pursue appropriate remedy. Accordingly, this petition stands, partly, allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

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(vjn)

